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Supreme Court of the United States

OCTOBER TERM, 1941

No. 970

GREAT SOUTHERN LIFE INSURANCE COMPANY, ET AL

vs

JOSEPH LANKSTON WILLIAMS

Reply To Petition For Writ of Certiorari To The United States Circuit Court of Appeals For The Fifth Circuit and Brief In Support Thereof.

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and
E. BYRON SINGLETON
Attorneys for Joseph
Lankston Williams.

Supreme Court of the United States

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JOSEPH LANKSTON WILLIAMS

Reply To Petition For Writ of Certiorari To The United States Circuit Court of Appeals For The Fifth Circuit and Brief In Support Thereof.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now comes respondent, JOSEPH LANKSTON WILLIAMS, and submits this his answer to the petition of GREAT SOUTHERN LIFE INSURANCE COMPANY, a corporation and the petition of PHILLIPS PETROLEUM COMPANY, a corporation, for issuance of a writ of certiorari to review the final judgment of the United States Circuit Court of Appeals for the Fifth Circuit, entered on the 13th day of December, 1941. The Circuit Court entered its judgment reversing the United States District Court for the Northern District of Texas, and

remanding the case for further proceedings under proceedings for composition or extension in bankruptcy.

STATEMENT OF MATTER INVOLVED

Respondent cannot agree with the statement submitted by the petitioners as to the matter involved in the application for certiorari. The opinion of the Circuit Court of Appeals and its finding of facts, as supported by the record, evidences that from all of the facts and from all of the circumstances that Joseph Lankston Williams, your respondent, was a "farmer" within the definition of a farmer under Section 75(r) of the Bankruptcy Act. (11 U.S.C.A., Sec. 203(r).)

The Circuit Court of Appeals devoted practically the entire of its opinion to the statement of facts existing in this particular case, (Record 191-195), and therein outlined that each case must be determined according to its own facts, (Record 194). In determining the question of whether this particular farmer is or is not pursuing the occupation of farming as his chief livelihood, or deriving the principal part of his income therefrom, (Record 194), the Circuit Court considered the particular facts surrounding the respondent herein.

BASIS FOR DENYING JURISDICTION

No where does it appear in the opinion of the Circuit Court of Appeals that the position of respondent was determined to be that of a farmer because he was a "landlord", but, to the contrary, the Circuit

Court of Appeals' opinion commences "There is no dispute as to the facts." (Record 192), and thereafter follows with a three page statement of the various things that respondent did concerning periodic visits to the three farms located in separate counties seeing that the crops were duly harvested, the farming whereby respondent furnished seed wheat, gasoline and oil, the manner of respondent's discussion and advice with tenants as to the best method of plowing and cultivating the lands so as to prevent erosion from wind and rain, together with respondent's statement and position that he stood ready to help in any way he could to save time and expense in operations, the distinct arrangements for pasturing of milk cows, the completion of crops because the tenant walked off, the personal distribution of poison for grasshoppers, and the fact that respondent had no other occupation and no other income except the occupation concerning and the income derived from the farms and the ranch. (Record 192-193). Many other factors were submitted by the Circuit Court of Appeals and the concluding sentence to the resume of the facts to evidence the position of the Circuit Court was, "Each case must be determined according to its own facts." (Record 194)

The opinion of the Court was not in conflict with but was in agreement with the case of SHYVERS vs. SECURITY FIRST NATIONAL BANK, 108 Fed. (2d) 611, and the case of FIRST NATIONAL BANK AND TRUST COMPANY vs. BEACH, 301 U. S. 435.

NO CONFLICT OF OPINION TO GRANT JURISDICTION

The opinion of the Circuit Court clearly considered the SHYVERS and BEACH cases, and predicated upon the facts appearing above evidenced no conflict whatsoever therewith. This is definitely shown from the opinion of the Court as follows:

"The case of SHYVERS VS. SECURITY FIRST NATIONAL BANK, 108 F. (2d) 611 by the Ninth Circuit, relied on by the lower court in the present case was an extreme instance, where the owner lived in England with a husband engaged in another and distinct business. She did nothing but receive the rents collected by her attorneys in this country who handled the property as her correspondents and agents. The conclusion which we reach here is no different in principle from that case. We hold as it does, that the claimant's business must be that of a farmer, as said by the Supreme Court in FIRST NATIONAL BANK AND TRUST COMPANY VS. BEACH, 301 U. S. 435, with the 'major portion of his time' devoted to one of the activities named in the law; or the principal part of his income must be derived from such an operation which he conducts in the manner above described, even though he does not devote the greater part of his time thereto. He does not become a farmer by merely receiving rents or revenues without more, where he has another business in which he is primarily engaged, although such rents and income may exceed that of such other business or occupation."

In the present case, we think the facts show that all of Williams' business activities were devoted to his farming, and that his entire income was derived from farming operations.

(fol. 197) For the reasons assigned, the judgment below is reversed, and the cause remanded for further proceedings not inconsistent with the views herein expressed."

Applicants for writ of certiorari also set up as cases which conflict with the Williams holding the opinions of DIMMITT V. GREAT SOUTHERN LIFE INSURANCE COMPANY, ET AL, 124 Fed. (2d) 40; BAXTER V. SAVINGS BANK OF UTICA, N. Y., ET AL, 92 Fed. (2d) 404; and IN RE OLSON, 21 Fed. Sup. 504. The distinguishing factors in these cases are self evident.

In the Dimmitt Case, from the opinion, we read:

"It would seem clear therefore that Dimmitt was not engaged in farming in so far as the ranch was concerned. It was leased for an annual money rental payable in advance and all that he did was to receive his part of the rental after payment of repairs and upkeep. It is also clear that he was not actually or technically engaged in farming so far as the property belonging to the corporation was concerned. He could not in his own name invoke the benefits of this law for a corporation in which he owned only one share of the stock. Unlike Williams, he did not have or carry on the business of farming with respect to any of the lands involved. He simply collected his share of the rents and received his part of the dividends or earnings from the corporation."

From the Baxter opinion we read:

"The bankrupt, appellant, resided and practiced law in Utica, N. Y., a great many years prior to February, 1935, at which time he moved to Grantville, Ga. In October, 1935, he filed his petition under section 75, seeking to effect a composition or extension of his debts. The usual proceedings were had on this petition, the schedule of assets and appraisal disclosing that farm property constituted only a small part of appellant's estate, and that the potential income from his farming operations was very small as compared with that of his other property."

It is to be noticed further that the Baxter opinion is by this same Circuit Court of Appeals and that it was fully considered in the briefs before such Circuit and the distinguishing features were recognized by the Court.

From the Olson opinion we notice these facts, which differentiate it from the Williams case, and which facts appear in the opinion:

"The debtor in this case resides permanently in the city of East Moline, Ill., and the evidence shows that substantially all of his time is devoted to activities other than producing products of the soil. So far as the East farm is concerned his status is that of a landlord without any qualifications. The case is not similar to First National Bank & Trust Co. v. Beach, 301 U.S. 435, 57 S. Ct. 801, 804, 81 L. Ed. 1206, where the debtor resided upon the farm and personally devoted his labor to producing products of the soil and rented a part to others. Mr. Justice Cardozo in that case said: 'The picture, however, is distorted if Beach

is looked upon as a landlord with rentals unrelated to his primary vocation. His rentals like his labor smacked of the soil, and made his not less, but more a farmer than he would have been without them.' In the case at bar the debtor's labor is primarily not devoted to the products of the soil."

QUESTIONS PRESENTED

No question whatsoever is presented in the petition for writ of certiorari. The only thing that was considered by the Circuit Court of Appeals is set forth as follows:

I.

Was respondent, in view of the series of farming facts appearing in Record 192-194, a farmer?

REASONS FOR REFUSAL OF THIS WRIT

I.

The opinion of the Circuit Court of Appeals, in its holding that claimant's business must be that of a farmer, is in accord with the opinion of the FIRST NATIONAL BANK AND TRUST COMPANY VS. BEACH, 301 U. S. 435, with the major portion of the time devoted to one of the activities named in the law, or the principal part of his income derived from such an operation which the farmer conducts in the manner above described. The Circuit Court found that Joseph Lankston Williams, from all of the facts, devoted all of his business activities to farming and that his entire income was derived from farming operations.

II.

There is no conflict whatsoever with the case of SHYVERS VS. SECURITY FIRST NATIONAL BANK, 108 Fed. (2d) 611, because the facts in the Shyvers case were one extreme instance where the owner of land did nothing other than live in England with a husband engaged in another and distinct business and the receipt of rent collected by her attorneys in this country, and that her attorneys in this country handled the property as her correspondents and agents. And the Circuit Court in the instant case held, as the Shyvers case did, that the claimant's business must be that of a farmer and found from all of the facts that Williams' business activities were devoted to his farming and that his entire income was derived from farming operations.

The opinion in the DIMMITT VS. GREAT SOUTHERN LIFE INSURANCE COMPANY, et al, 121 Fed. (2d) 40, rendered on the same day by the same Circuit Court of Appeals, clearly distinguishes activity which involves only the receipt of rentals, as in the Dimmit case, from the facts in the case of respondent Williams, whose time and energy was devoted to and his income was derived from farming operations.

III.

The judgment and decision of the Circuit Court of Appeals herein is one wherein there is no dispute as to the facts, and this series of facts were looked to by the Circuit Court and the determination of Williams as a farmer was made according to such facts.

There is nothing in the opinion of the Circuit Court that differentiates it from the line of decisions of the Supreme Court of the United States and of the Circuit Courts, which determine from the facts of a particular case whether or not a man is a farmer. The points involved were points of fact and no point of law whatsoever was involved.

PRAYER FOR DISMISSAL

WHEREFORE, your respondent prays that no writ of certiorari issue from this court and that such application for a writ of certiorari be denied, and that the opinion of the Circuit Court of Appeals may thus be allowed to stand, which reversed and rendered the judgment of the District Court for the Northern District of Texas, Amarillo Division.

Dated this 13th day of March, 1942.

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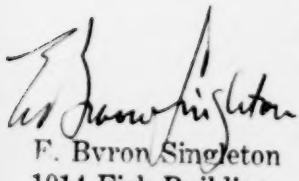
Attorneys for Joseph
Lankston Williams



E. Byron Singleton
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Amarillo, Texas
Of Counsel

BRIEF IN SUPPORT OF REFUSAL OF THE PETITION FOR WRIT OF CERTIORARI

I.

STATEMENT OF THE CASE FROM OPINION OF COURT BELOW

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit, rendered on December 13, 1941, appears at page 191 of the Record, and is reported in 124 Fed. (2d) 38. The statement of Facts completely appears in such opinion as follows:

"The question in this case is as to whether the appellant is a farmer within the meaning of subsection (r) of Section 75 of the Bankruptcy Law.

There is no dispute as to the facts, Williams, among other properties, owned an undivided three-fourths interest (fol. 193) in 6961 acres, and a one-half interest in 1195 acres, or a total of 8156 acres of land, comprising a ranch; the other undivided interest belonged to one Dimmitt, who has a similar appeal before this court. The ranch was under lease for a yearly money rental of $2453.10, out of which repairs and expenses for the upkeep of the place were paid. Appellant's proportionate share of rents and royalties of approximately $2400 per year from a mineral lease to Phillips Petroleum Company upon this ranch were not paid to him, but were retained by the lessee under a trust agreement to protect it against a prior mortgage on the property.

He also owned three other farms, the first embracing 254 acres, situated in Texas County, Okla-

homa; the second consisting of five or six hundred acres in Sherman County, Texas, and the third comprising about five hundred acres in Potter County, Texas, situated some seven or eight miles from Amarillo, Texas, where he lived. All three were worked by tenants on a share crop basis of one-third, and produced mainly wheat. Williams resided and kept an office in the city of Amarillo, but had no other business. He visited the Potter County farm from one to three times a week, and daily during harvesting season; the other two from one to two times a month, but in harvesting season he would go there several times a week to see that the crops were duly harvested, and his share was delivered to the elevator. In 1940, he had to order the tenant on one of these places to return and go over a portion of the land which had been insufficiently harvested. In 1938, he furnished seed wheat, gasoline and oil for planting, and receiving one-half of the crop on the Potter County farm. He discussed and advised with his tenants as to the best method of plowing and cultivating the land so as to prevent erosion from wind and rain, and stated that he stood ready to help in any way that he could to save time and expenses in operations. On the Sherman (fol. 194) County farm, he made "distinct" arrangements with his tenant for pasturing of milk cows on a part of the land. He had to take charge of the Oklahoma farm in 1940, and finish the crop because the tenant walked off. The crop was harvested through hired labor on the basis of one-half to the man who gathered it. Appellant personally distributed some poison to kill grasshoppers. As stated, he has no other occupation and no

income except that derived from these farms and the ranch which he owns in indivision with Dimmitt.

The conditions and relations of appellant to these properties have existed for several years.

The Supreme Court in BENITEZ V. BANK OF NOVA SCOTIA, 313 U. S. 270 has decided that the definition of a farmer in sub-section (r) of Section 75 must prevail over that of Section 1 (17) or the Chandler Act, in proceedings affecting farmers. Hence, if under the facts of this case, Williams falls in either catagory of that sub-section, he is entitled to proceed, and the decision below should be reversed. Sub-section (r) reads:

'For the purposes of this section, section 22 (b) and section 202, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur.'

(fol. 195) The language of this provision does not say specifically that the claimant to relief must actually till the soil with his own hands or labor. He may be 'primarily bona fide personally engaged' in any one of those operations, if that is his business or occupa-

tion, or if the major part of his time and attention are given to its supervision and direction, although the actual work be performed by day labor, those employed by the month, commonly known as 'wage hands', or by share croppers, who cultivate the land for a share of the crops. Congress undoubtedly knew that a large part of farming operations are carried on in this manner, that is, without the owner or farmer doing the manual labor himself. This Act was an emergency measure and intended to give relief to that class of citizens who were engaged in agricultural pursuits as a livlihood or business, and to restrict it to those small operators who themselves till the soil would exclude, as we know from common knowledge, a very large segment of the farming population. If the doing of physical labor were the test, the owner of farm properties, no matter how extensive, could by the simple expedient of going upon and cultivating a few acres with his own labor, bring under the protection and administration of the Bankruptcy Court thousands of acres, even though ninety-five per cent were cultivated by share croppers, lessees paying money rentals, or what not. Once the status as a farmer is fixed, all of his property wherever situated, and regardless of its nature, is drawn under the jurisdiction of the Bankruptcy Court in a proceeding of this kind. Sub-section (n) Sec. 75. Again, if through illness or misfortune, the owner became physically unable to perform farm labor, he would cease to be a farmer through no fault of his own, because he could not till the soil. Neither do we think that the operator can acquire or lose the status of a farmer by the fact alone of establishing his residence upon or mov-

ing from the farm lands. All of these matters are but circumstances tending to support or dispute the fact that he is or (fol. 196) is not pursuing the occupation as his chief livelihood, or deriving the principal part of his income therefrom. Even the discovery of oil or other minerals upon the farm in sufficient quantities to exceed returns from products of the soil, would not serve to convert the farmer into an oil operator, so long as he continued unchanged his relation to the operations of the farm. Each case must be determined according to its own facts."

II.

NO CONFLICT OF OPINION TO GRANT JURISDICTION

The opinion of the Circuit Court clearly considered the SHYVERS and BEACH cases, and predicted upon the facts appearing above evidenced no conflict whatsoever therewith. This is definitely shown from the opinion of the Court as follows:

"The case of SHYVERS V. SECURITY FIRST NATIONAL BANK, 108 F. (2d) 611 by the Ninth Circuit, relied on by the lower court in the present case was an extreme instance, where the owner lived in England with a husband engaged in another and distinct business. She did nothing but receive the rents collected by her attorneys in this country who handled the property as her correspondents and agents. The conclusion which we reach here is no different in principle from that case. We hold as it does, that the claimant's business must be that of a farmer, as said by the Supreme Court in FIRST

NATIONAL BANK AND TRUST COMPANY V. BEACH, 301 U. S. 435, with the 'major portion of his time' devoted to one of the activities named in the law; or the principal part of his income must be derived from such an operation which he conducts in the manner above described, even though he does not devote the greater part of his time thereto. He does not become a farmer by merely receiving rents or revenues without more, where he has another business in which he is primarily engaged, although such rents and income may exceed that of such other business or occupation.

In the present case, we think the facts show that all of Williams' business activities were devoted to his farming, and that his entire income was derived from farming operations.

(fol. 197) For the reasons assigned, the judgment below is reversed, and the cause remanded for further proceedings not inconsistent with the views herein expressed."

Applicants for writ of certiorari also set up as cases which conflict with the Williams holding the opinions of DIMMITT V. GREAT SOUTHERN LIFE INSURANCE COMPANY, ET AL, 124 Fed. (2d) 40; BAXTER V. SAVINGS BANK OF UTICA, N. Y., ET AL, 92 Fed. (2d) 404; and IN RE OLSON, 21 Fed. Sup. 504. The distinguishing factors in these cases are self evident.

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"It would seem clear therefore that Dimmitt was not engaged in farming in so far as the ranch was

concerned. It was leased for an annual money rental payable in advance and all that he did was to receive his part of the rental after payment of repairs and upkeep. It is also clear that he was not actually or technically engaged in farming so far as the property belonging to the corporation was concerned. He could not in his own name invoke the benefits of this law for a corporation in which he owned only one share of the stock. Unlike Williams, he did not have or carry on the business of farming with respect to any of the lands involved. He simply collected his share of the rents and received his part of the dividends or earnings from the corporation."

From the Baxter opinion we read:

"The bankrupt, appellant, resided and practiced law in Utica, N. Y., a great many years prior to February, 1935, at which time he moved to Grantville, Ga. In October, 1935, he filed his petition under section 75, seeking to effect a composition or extension of his debts. The usual proceedings were had on this petition, the schedule of assets and appraisal disclosing that farm property constituted only a small part of appellant's estate, and that the potential income from his farming operations was very small as compared with that of his other property."

It is to be noticed further that the Baxter Opinion is by this same Circuit Court of Appeals and that it was fully considered in the briefs before such Circuit and the distinguishing features were recognized by the Court.

From the Olson opinion we notice these facts,

which differentiate it from the Williams case, and which facts appear in the opinion:

"The debtor in this case resides permanently in the city of East Moline, Ill., and the evidence shows that substantially all of his time is devoted to activities other than producing products of the soil. So far as the East farm is concerned his status is that of a landlord without any qualifications. The case is not similar to First National Band & Trust Co. v. Beach, 301 U.S. 435, 57 S. Ct. 801, 804, 81 L. Ed. 1206, where the debtor resided upon the farm and personally devoted his labor to producing products of the soil and rented a part to others. Mr. Justice Cardozo in that case said: 'The picture, however, is distorted if Beach is looked upon as a landlord with rentals unrelated to his primary vocation. His rentals like his labor smacked of the soil, and made him not less, but more a farmer than he would have been without them.' In the case at bar the debtor's labor is primarily not devoted to the products of the soil."

III

ARGUMENT

Petitioners seek to inject non-existent facts in their petition for writ of certiorari. Petitioners seek to isolate a few of the facts in the record and to draw their complete conclusions therefrom, without regard to the entire record as considered by the Circuit Court of Appeals. The proper determination of the relationship of Joseph Lankston Williams to the soil appears in the opinion of the Circuit Court of Appeals; and his relation, in turn, to hired hands and share

croppers evidenced that Williams consulted with them and discussed and advised with them (Record 192) as to the best method of plowing and cultivating the land so as to prevent erosion from wind and rain, and he stood ready and did help in anyway he could to save time and expense in operations. (Record 192) Respondent, Williams, likewise, as reflected from the entire record, devoted his full and entire time and energy and physical efforts to procure the products from the soil by the use of all the scientific devices and farming methods with which he became ecquainted during the entire span of his life, and thus the facts show that all of Williams' business activities were devoted to his farming, (Record 195) and his entire income derived from farming operations (Record 195). The record reflects that Williams devoted his time and energy and obtained his income from approximately 9510 acres of land situated in Texas Counties of Hutchinson, Moore, Potter and Sherman, and the Oklahoma County known as Texas County, (Record 192) that the production from the three farms was mainly that of wheat, (Record 192) and that Williams' complete time and business activities were exercised between these various counties and between these various farms. (Record 192)

CONCLUSION

The statement of facts speak for themselves; the color, tenor and effect of the facts in the Joseph Lankston Williams case were determined from all of the various angles to clearly place Williams within the definition of a farmer, not only from the stand-

point that his entire time and personal energy was devoted to farming but, likewise, because all of his income was derived from farming operations.

WHEREFORE, its is respectfully submitted that there is no conflict for consideration before this Honorable Court and that the opinion of the Fifth Circuit should be allowed to stand, in which opinion the Circuit Court reversed the judgment of the United States District Court for the Northern District of Texas, Amarillo Division.

Respectfully submitted,
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A copy of this Reply and Brief is being mailed to Mr. Fred R. Switzer, Houston, Texas, Mr. C. C. Small, Mr. Binford Arney, and Mr. C. C. Small, Jr., Austin, Texas, Attorneys for Great Southern Life Insurance Company, and to Mr. Don Emery and Mr. Rayburn L. Foster, Bartlesville, Oklahoma, Mr. E. H. Foster and Mr. Warren M. Sparks, Amarillo, Texas, Attorneys for Phillips Petroleum Company.

E. Byron Singleton
Of Counsel for Joseph Lankston Williams.